

IN THE HIGH COURT OF CHHATTISGARH AT BILASPURWrit Petition No. 4871/2004PETITIONERLaini Bai
Smt. Laini Bai, W/o Herotha,
aged about 40 years,
Occupation - House wife,
R/o Village- Dalpi, situated in
Village Panchayat Somnapur Naya,
Tahsil - Pandaria,
District- Kabirdham (C.G.).P.R. No. 4972/03
Presented by Shri. Indra Sen Sam
dated 21.12.04-Versus-RESPONDENTS

1.

State of Chhattisgarh,
Through Secretary, Director
Panchayat and Rural Development,
Mantralaya, Shastri Chowk,
Raipur (Chhattisgarh)

2.

Collector,
Kabirdham (C.G.)

3.

Sub Divisional Officer,
Pandaria, Distt. Kabirdham.

4.

Shri Harche Lal,
Sarpanch, Gram Panchayat
Somnapur Naya, Tahsil-
Pandaria, Distt. Kabirdham (C.G.).WRIT PETITION UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA FOR ISSUANCE OF A WRIT IN THE NATURE OF MANDAMUS, PROHIBITION, CERTIORARI ETC. OR ANY OTHER DIRECTION OR ORDER TO DO JUSTICE IN THE MATTER.

Details of the petition.

1. PARTICULAR OF THE PETITIONER :
As per cause title.
2. PARTICULARS OF THE RESPONDENTS :
As per cause title.
3. PARTICULARS OF THE ORDER AGAINST WHICH

Received (on)
21/12/2004
Administrative Officer
Office of the Advocate General
Bilaspur



आदेश पत्रक

मामला क्रमांक W.P.NO. 4871/04
सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	23-12-2004 Shri Rajeev Shrivastava, counsel for the petitioner. Shri N. K. Agrawal, Deputy Advocate General for respondents 1 to 3. Shri Rajesh Pandey, counsel for respondent No.4. Heard finally. The petitioner, by this writ petition under Article 226 of the Constitution of India, has questioned the legality, propriety and correctness of the order dated 25-11-2004 passed by respondent No.2, Collector, Kabirdham, whereby the Collector Kabirdham changed the category of Gram Panchayat Somnapur Naya from SC women to General Category. The petitioner's case is that she along with her husband was voter of Gram Panchayat Somnapur, therefore, the impugned order dated 25-11-2004 passed by the Collector is contrary to the provisions of Section 17(4) of the Panchayat Raj Adhiniyam, 1993 (hereinafter referred to as 'the Act') and therefore, decision taken by the Collector is illegal. On the other hand, respondents' reply is that on the date when the constituencies were categorized i.e. on 23rd September 2004 the petitioner was not a voter of village Panchayat Somnapur, whereas, she was voter of village Panchayat Domanpur. After declaring the Panchayat Somnapur as reserved category for women, the petitioner moved an application before the Registering Officer on 11-10-2004 in order to	

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -२-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	take the benefit of reserved constituency and got her name included. When the villagers made a complaint, on that an enquiry was made and meeting of Gram Sabha was also convened, in that meeting it was found that except the petitioner herein, her husband and one more person, no person from the S.C. community was residing in the village and only these 3 persons got included their names in order to take benefit of the reservation after the Panchayat was declared inadvertently for SC women contrary to the provisions of Section 17 of the Act. Having heard learned counsel for the parties, I have perused the documents and the petition. In this connection, Section 17 (4) of the Act envisages that 'the seats reserved under this section shall be allotted by the prescribed authority in the Gram Panchayat within the block by rotation in the prescribed manner'. Proviso to this section envisages that 'the Gram Panchayat, which has no population of Scheduled Castes or Scheduled Tribes or other Backward Classes, shall be excluded for allotment of seat reserved for Scheduled Castes, Scheduled Tribes or other Backward Classes, as the case may be.' It is an admitted position that when the Panchayat was reserved for SC women vide order Annexure-P/2 dated 23-9-2004, the petitioner was not voter of this Gram Panchayat. It is also an admitted position that the petitioner along with her husband and one of their relative moved an application before the Registering Authority on 11-10-2004 that is around about 18 days after the Panchayat was declared as reserved for women category and	

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	based on that application the petitioner's name was ordered to be entered on 15-10-2004 in the voter's list of the village Panchayat, Somnapur. Perusal of the application moved by the petitioner and her husband Annexure-R/5 & R/6 respectively attached with the reply filed by the State/respondents shows that on the date i.e. 11-10-2004 they were voters of village, Domanpur and as per reply filed by the State even the petitioner's husband was Sarpanch of village Domanpur from 1994 to 1999 and their names were entered in the voter's list of village Somnapur vide order dated 15-10-2004 and their names were deleted vide order dated 15-10-2004 from Gram Panchayat Domanpur. In this connection, the relevant provisions is sub-rule (2) of Rule-14 of the Chhattisgarh Panchayat Nirvachan Niyam, 1995 which envisages that 'every such list shall be liable to revision by reference to the first day of January of the year in which it is so revised' which means that the persons who were residing as on 1st January, 2004 were entitled for inclusion of their names. Perusal of the affidavit Annexure-R/7 filed by the husband of the petitioner along with the application for inclusion of name shows that they were residing since last 4-5 months in the village Somnapur which means that they were residing in the village, as per their own statement, from the month of May-June, therefore, they were not ordinary residents of village Somnapur as on 1-1-2004. Therefore, in view of the above, when Gram Panchayat, Somnapur was declared as reserved for	

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	women category, that fact prompted the petitioner to get her name included in the voter's list of village Somnapur to contest the election of Sarpanch. It is also an admitted position that nothing has been stated in the petition and there is no record available before the Court that apart from the these 3 persons whose names were entered in the voter's list on 15-10-2004, other persons of SC category were residing in that village. In this background if we examine provisions of sub-section (4) of Section 17 and Section 33-A of the Act, provisions of sub-section (4) as mentioned earlier envisages that if no population of Scheduled Castes is residing in the village, then that village will be excluded from the category of SC Panchayat and on 23-9-2004 there was no SC category voter in the voters' list of Panchayat Somnapur. Section 33-A envisages that notwithstanding anything contained in the Act or the rules made thereunder, the clerical error or omission apparent on the face of the record regarding reservation of seats under sub-sections (4), (5) and (6) of Section 13, sub-section (2), (3) and (4) of Section 17, apart from other sections, may be corrected by the prescribed authority with the prior permission of the State Government or the officer authorized by it for the purpose, at any time before the commencement of election proceedings.' When the complaint was lodged before the Collector about the fact that in village Somnapur no SC person is residing, then proceedings were initiated and clarification from the State Government	

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	was also sought regarding applicability of the provision and for taking further action. The Panchayat Department of the State Government vide Annexure-R/1 dated 15-10-2004 explained to the Collector, Kabirdham that if on enquiry SC and ST population is not in any village, then under the provisions of Section 33-A proceedings can be initiated and the mistake can be rectified. Accordingly, proceedings were initiated and the impugned order was passed under Section 33-A and correction was carried out. Therefore, in the first instance the action was taken with the approval of the State Government. Moreover, action has been initiated by the Collector, Kabirdham under the provisions of Panchayat Act and he is an authorized officer for proceeding under the Panchayat Act in connection with the Panchayat Election. Therefore, in view of the above discussion, the petitioner's name was in Domanpur Panchayat Electoral Roll and on 1st January 2004 as per the affidavit submitted by her husband, she was not residing in the village Somnapur and for including the name in the voter's list the petitioner moved an application before the Registering Officer on 11-10-2004 after the Panchayat was declared as reserved and on that day i.e. 23-9-2004 there was no voter of SC category in that village, as such the mistake was apparent on the face of record and looking to that mistake, the Collector, Kabirdham initiated the proceeding and ultimately passed the order under Section 33-A of the Act.	

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	Therefore, in view of the above fact, I do not find any illegality, infirmity and incorrectness in the order passed by the Collector, Kabirdham. Moreover, it is an admitted position that election process has already commenced by issuing notification on 15th December 2004 and as per Article 243-O (a) of the Constitution of India 'the validity of any law relating to the delimitation of constituencies or the allotment of seats to such constituencies, made or purporting to be made under Article 243-K, shall not be called in question in any Court'. As per clause (b) if any person has any grievance, then he can call in question the election by way of election petition after the election is complete. In view of the above, I am of the opinion that this petition is not maintainable, same is liable to be dismissed and it is accordingly dismissed.	Sd/- L.C.BHADOO Judge

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